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9 **UNITED STATES BANKRUPTCY COURT**
10 **EASTERN DISTRICT OF WASHINGTON**

11 In re:

12 GIGA WATT, Inc., a Washington
13 corporation,

14 Debtor.

15 Case No. 18-03197 FPC 11

16 The Honorable Frederick P. Corbit
17 Chapter 11

18 **MEMORANDUM IN SUPPORT OF**
19 **CHAPTER 11 TRUSTEE'S**
20 **MOTION FOR ORDER: (I)**
21 **APPROVING THE SALE OF**
22 **MOSES LAKE EQUIPMENT AND**
23 **RELATED RELIEF, (II)**
24 **APPROVING BID PROCEDURES,**
25 **AND (III) SHORTENING TIME TO**
 OBJECT

26 **Telephonic Hearing**

27 Date: October 6, 2020
28 Time: 10:30 a.m.
29 Telephone: (509) 353-3183

30 Memorandum in Support of Chapter 11
31 Trustee's Motion for Order: (i) Approving
32 Sale of Moses Lake Equipment, etc.

TABLE OF CONTENTS

| | | |
|------|---|----|
| I. | BACKGROUND FACTS AND SALE DESCRIPTION | 1 |
| II. | PROPOSED BID PROCEDURES..... | 2 |
| III. | PROPOSED SHORTENED NOTICE..... | 3 |
| IV. | BANKRUPTCY CASE BACKGROUND | 3 |
| V. | JURISDICTION AND VENUE..... | 4 |
| VI. | POINTS AND AUTHORITIES | 4 |
| A. | The Sale Is Authorized Pursuant to 11 U.S.C. § 363(b)(1) | 4 |
| 1. | <i>The ML Equipment Is Property of the Estate.....</i> | 5 |
| 2. | <i>Sound Business Judgment Supports the Sale</i> | 5 |
| B. | The Bid Procedures Constitute an Appropriate Process to Obtain the Highest or Best Bid | 6 |
| C. | The Sale Is Free and Clear of Any Lien, Claim or Interest | 8 |
| D. | The Sale Is in Good Faith | 10 |
| E. | Cause Exists to Waive the Rule 6004 Stay..... | 10 |
| F. | Cause Exists for Shortened Notice..... | 11 |
| G. | The Form and Manner of Service of Notice Is Sufficient | 12 |
| VII. | CONCLUSION | 12 |

Memorandum in Support of Chapter 11
Trustee's Motion for Order: (i) Approving
Sale of Moses Lake Equipment, etc.— Page i

TABLE OF AUTHORITIES

Cases

| | |
|---|------|
| <i>Ewell v. Diebert (In re Ewell),</i> 958 F.2d 276 (9th Cir. 1992)..... | 10 |
| <i>In re Claar Cellars LLC and RC Farms LLC,</i> 2020 WL 1238924 (Bankr. E.D. Wash. Mar. 13, 2020) | 5 |
| <i>In re Equity Funding Corp. of Am.,</i> 519 F.2d 1274 (9th Cir. 1975)..... | 5 |
| <i>In re Ernst Home Ctr., Inc.,</i> 209 B.R. 974 (Bankr. W.D. Wash. 1997) | 5 |
| <i>In re Filtercorp, Inc.,</i> 163 F.3d 570 (9th Cir. 1998)..... | 10 |
| <i>In re Food Barn Stores, Inc.,</i> 107 F.3d 558 (8 th Cir. 1997) | 7 |
| <i>In re Integrated Resources, Inc.,</i> 147 B.R. 650 (S.D.N.Y. 1992) | 6, 7 |
| <i>In re Lady H Coal Co., Inc.,</i> 193 B.R. 233 (Bankr. S.D. W. Va. 1996)..... | 8 |
| <i>In re Lind,</i> 2019 WL 2950167 (B.A.P. 9th Cir. July 8, 2019) | 10 |
| <i>In re Lionel Corp.,</i> 722 F.2d 1063 (2nd Cir. 1983) | 5 |
| <i>In re Onouli-Kona Land Co.,</i> 846 F.2d 1170 (9th Cir. 1988) | 10 |
| <i>Mission Prod. Holdings, Inc. v. Tempnology, LLC,</i> 139 S. Ct. 1652, 203 L. Ed. 2d 876 (2019) | 5 |

Memorandum in Support of Chapter 11
Trustee's Motion for Order: (i) Approving
Sale of Moses Lake Equipment, etc.– Page ii

Statutes

| | | |
|---|-----------------------|-------------|
| 2 | 11 U.S.C. § 105..... | 4 |
| 3 | 11 U.S.C. § 363..... | 4, 8, 9, 10 |
| 4 | 11 U.S.C. § 510..... | 9 |
| 5 | 28 U.S.C. § 157..... | 4 |
| 6 | 28 U.S.C. § 1334..... | 4 |
| 7 | 28 U.S.C. § 1409..... | 4 |

Rules

| | | |
|----|--------------------------|-----------|
| 9 | Fed.R.Bank.P. 2002 | 4, 11, 12 |
| 10 | Fed.R.Bank.P. 6004 | 4, 11 |
| 11 | Fed.R.Bank.P. 9006 | 4, 11 |
| 12 | Fed.R.Bank.P. 9007 | 4 |
| 13 | Fed.R.Bank.P. 9014 | 4 |
| 14 | L.B.R. 2002-1 | 4, 11, 12 |

Memorandum in Support of Chapter 11
Trustee's Motion for Order: (i) Approving
Sale of Moses Lake Equipment, etc.– Page iii

1 Mark D. Waldron, in his official capacity as the Chapter 11 Trustee (the
2 “Trustee”), hereby respectfully submits this memorandum in support of the
3 *Chapter 11 Trustee’s Motion for Order: (i) Approving the Sale of Moses Lake*
4 *Equipment, (ii) Approving Bid Procedures and (iii) Granting Related Relief* (the
5 “Motion”).

6 **I. BACKGROUND FACTS AND SALE DESCRIPTION**

7 On March 13, 2020, the Trustee shut down the above-captioned debtor’s
8 (“Debtor’s”) operations in Moses Lake, Washington (the “ML Facility”). Since
9 then, the Trustee has negotiated three agreements that will allow the Trustee to
10 vacate the ML Facility premises and return them to the landlords, Giga Plex, LLC
11 and MLDC 1, LLC (the “ML Landlords”) in an orderly and efficient manner.

12 The first agreement is with Allrise Financial Group, Inc. and Allrise IP
13 Holding, Inc. (“Allrise”). Pursuant to the agreement with Allrise, Allrise will
14 remove 100 miners from the ML Facility in exchange for a release of all claims.
15 No timely objection to that motion has been received and the Trustee will submit
16 an Order promptly.

17 The second agreement is with the ML Landlords. It provides, among other
18 things, for the return of the premises to the ML Landlords after Allrise has
19 removed the 100 miners and after the Buyer has removed the ML Equipment
20 (defined and discussed below). The Trustee will shortly file a motion to approve
21 the agreement with the ML Landlords.

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24 Memorandum in Support of Chapter 11
25 Trustee’s Motion for Order: (i) Approving
26 Sale of Moses Lake Equipment, etc.— Page 1

The third agreement is the subject of this Motion. The Trustee has negotiated an agreement (the “Sale Agreement”) with Chain Lodge 1, LLC, a Washington limited liability company (“Buyer”) to sell (“Sale”) certain equipment (the “ML Equipment”) located at the Debtor’s facility in Moses Lake, Washington (the “ML Facility”). The ML Equipment consists of certain used miners and computers as well as power supply units, power cables, power cords, servers and computer screens. The ML Equipment is more particularly described in Schedule 1 to the Sale Agreement. A true and correct copy of the Sale Agreement is attached to the Motion as Exhibit B.

10 The price for the ML Equipment is \$42,000 (the “Purchase Price”) to be
11 paid within seven calendar days after entry of an Order approving the Sale. The
12 Buyer has placed a \$4,200 earnest money deposit with the Trustee, which will
13 become nonrefundable and be applied to the earnest money deposit if the Sale is
14 approved. If the Sale is not approved, the Purchase Price will be returned to the
15 Buyer. Pursuant to the Sale, the Buyer is assuming the risk and burden of
16 removing the ML Equipment from the ML Facility.

II. PROPOSED BID PROCEDURES

18 The Sale is subject to overbidding. The Trustee proposes that overbids be
19 received by the Trustee on or before October 4, 2020. They shall be sent to the
20 Trustee by email at the address, mark@mwaldronlaw.com, with a copy
21 simultaneously sent to the Trustee's counsel by email at the address,
22 pegan@potomaclaw.com. To qualify as a bidder ("Qualified Bidder"), a proposed

23 Memorandum in Support of Chapter 11
24 Trustee's Motion for Order: (i) Approving
Sale of Moses Lake Equipment, etc.— Page 2

1 bidder must establish that the bidder has the financial means to timely close the
2 Sale. To qualify as a bid (“Qualified Bid”), a bid must include all the material
3 terms of the Sale Agreement, except for the increased purchase price. The Trustee
4 will determine in his discretion and business judgment, subject to Court review,
5 whether a bidder is a Qualified Bidder and whether a bid is a Qualified Bid.

6 The initial overbid must exceed the Purchase Price (which is \$42,000) by
7 not less than \$5,000. Subsequent overbids must be in minimum increments of
8 \$5,000. If the Trustee receives one or more Qualified Bids, then the Qualified
9 Bidder(s) and the Buyer may continue to bid at the hearing in minimum
10 increments of \$5,000, until a winning bid is obtained. No break-up fee is
11 proposed. EcoChain, Inc. has expressed an interest in submitting an overbid.

12 **III. PROPOSED SHORTENED NOTICE**

13 The Trustee respectfully requests that the Court allow the matter to be heard
14 on October 6, 2020 at 10:30 a.m. Objections to the principal relief requested
15 herein, i.e., approval of the Sale and Bidding Projections, would be due on
16 October 2, 2020. Objections to the request for shortened notice would be due at
17 the hearing on October 6, 2020 at 10:30 a.m.

18 **IV. BANKRUPTCY CASE BACKGROUND**

19 On November 19, 2018, Giga Watt, Inc. commenced this case by filing a
20 voluntary petition for relief pursuant to sections 101, *et seq.* of title 11 of the
21 United States Code (“Bankruptcy Code”).

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24 Memorandum in Support of Chapter 11
25 Trustee’s Motion for Order: (i) Approving
Sale of Moses Lake Equipment, etc.— Page 3

1 On January 23, 2019, the Court approved the appointment of Mark D.
2 Waldron as the Trustee pursuant to its *Order Approving Appointment of Chapter*
3 *11 Trustee*. [Doc. No. 146]

On March 13, 2020, the Trustee shut down the Debtor's operations at its facility in Moses Lake, Washington ("ML Facility"). The Trustee has negotiated a settlement with the ML Facility landlords ("ML Landlords"), pursuant to which the Trustee will return the ML Facility premises to the ML Landlords. A motion to approve this settlement with the ML Landlords will be filed separately.

V. JURISDICTION AND VENUE

10 The Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 157 and
11 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
12 Venue is proper in this district pursuant to 28 U.S.C. § 1409.

13 The statutory predicates for the relief requested in the Sale Motion are 11
14 U.S.C. § 105, 11 U.S.C. § 363, Fed.R.Bank.P. 2002(a)(2), Fed.R.Bank.P. 6004(a),
15 (b), (c), (e), (f) and (h), Fed.R.Bank.P 9006(c), Fed.R.Bank.P. 9007,
16 Fed.R.Bank.P. 9014 and L.B.R. 2002-1.

VI. POINTS AND AUTHORITIES

A. The Sale Is Authorized Pursuant to 11 U.S.C. § 363(b)(1)

Under section 363(b)(1) of the Bankruptcy Code, the Trustee may use, sell, or lease property of the estate, other than in the ordinary course of its business. 11 U.S.C. § 363. The decision to enter into a transaction that is outside the ordinary course of the debtor's business must be based on the Trustee's reasonable business

23 Memorandum in Support of Chapter 11
24 Trustee's Motion for Order: (i) Approving
Sale of Moses Lake Equipment, etc.— Page 4

1 judgment and supported by “some articulated business justification.” *In re Ernst*
2 *Home Ctr., Inc.*, 209 B.R. 974, 979 (Bankr. W.D. Wash. 1997) (quoting *In re*
3 *Lionel Corp.*, 722 F.2d 1063, 1070 (2nd Cir. 1983)). The standard is deferential.
4 See *In re Claar Cellars LLC and RC Farms LLC*, 2020 WL 1238924, at *4
5 (Bankr. E.D. Wash. Mar. 13, 2020) (describing the business judgment standard as
6 a “deferential” standard pursuant to which a “bankruptcy court will generally
7 approve’ a reasoned decision by the debtor.”).¹

8 **1. *The ML Equipment Is Property of the Estate***

9 Shortly after his appointment in January 2019, the Trustee inspected the
10 Debtor’s facilities in Moses Lake, Washington, and East Wenatchee, Washington.
11 The Trustee found various equipment, including miners, electrical gear and
12 various computers in these facilities. Based on his investigation, including
13 interviews with former employees of the Debtor who have personal knowledge,
14 the Trustee has determined that the Debtor owned the ML Equipment.

15 **2. *Sound Business Judgment Supports the Sale***

16 A court may approve a section 363 sale if the sale is based upon “some
17 articulated business justification.” *In re Lionel Corp.*, 722 F.2d 1063, 1070 (2nd
18 Cir. 1983). See *In re Metropolitan Mortgage & Securities Co., Inc.*, 2019 WL
19

20 ¹ Citing and quoting, *In re Equity Funding Corp. of Am.*, 519 F.2d 1274, 1277
21 (9th Cir. 1975); *Ernst Home Ctr., Inc.*, 209 B.R. at 979-80, and *Mission Prod.*
22 *Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652, 1658, 203 L. Ed. 2d 876
(2019).

1 7018891, at *3 (Bankr. E.D. Wash. 2019) (approving section 363 sale, Court
2 found that sound business judgment supported sale).

3 The Trustee has contacted several potential buyers regarding the sale of the
4 ML Equipment. EcoChain, Inc., the purchaser of the Debtor's former facility in
5 East Wenatchee, Washington (referred to in this case as the TNT Facility) has
6 offered to pay \$15,000 for the ML Equipment. The Buyer's offer is \$42,000,
7 nearly three times more. The Buyer has agreed to remove the ML Equipment from
8 the ML Facility at Buyer's expense. The Trustee is informed that the cost of
9 removal could exceed \$10,000. By removing the ML Equipment, the Trustee will
10 accomplish a major step toward returning the ML Facility to the ML Landlords. In
11 addition, the Sale Agreement is subject to overbidding which will ensure that
12 optimal value is being recovered under the circumstances. EcoChain, Inc. has
13 expressed an interest in submitting an overbid.

14 The foregoing shows that the Sale Agreement is supported by sound
15 business judgment and will benefit the estate.

16 **B. The Bid Procedures Constitute an Appropriate Process to Obtain**
17 **the Highest or Best Bid**

18 The Trustee requests that the Court approve the Bid Procedures. A trustee's
19 business judgment is entitled to substantial deference with respect to the
20 procedures to be used in selling an estate's assets. *See In re Integrated Resources,*
21 *Inc.*, 147 B.R. 650, 656-7 (S.D.N.Y. 1992) (bid procedures negotiated by a trustee

22
23 Memorandum in Support of Chapter 11
24 Trustee's Motion for Order: (i) Approving
Sale of Moses Lake Equipment, etc.— Page 6

1 are reviewed according to the deferential “business judgment” standard, under
2 which such procedures and arrangements are “presumptively valid”).

3 The paramount goal in any proposed sale of property of the estate is to
4 maximize proceeds. *See In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th
5 Cir. 1997) (In bankruptcy cases, “a primary objective of the Code [is] to enhance
6 the value of the estate at hand”); *Integrated Resources*, 147 B.R. at 659 (“[I]t is a
7 well-established principle of bankruptcy law that the objective of the bankruptcy
8 rules and the trustee’s duty with respect to such sales is to obtain the highest price
9 or greatest overall benefit possible for the estate.”) (internal citations omitted).

10 As discussed above, in the Trustee’s reasonable business judgment, the Bid
11 Procedures will maximize the amount that the estate can recover for the ML
12 Equipment. The Bid Procedures provide a fair opportunity for overbids. They will
13 ensure that any competing bids are made on terms which permit ready comparison
14 and analysis of which bid is a higher and better offer. Interested bidders will have
15 until October 2, 2020 to submit their bids. If a Qualified Bid is received, then
16 additional bids by the Buyer and Qualified Bidder may be submitted at the
17 hearing.

18 In sum, the Bid Procedures are appropriate, reasonable and designed to
19 ensure the most robust auction process possible for the ML Equipment.

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21
22
23 Memorandum in Support of Chapter 11
24 Trustee’s Motion for Order: (i) Approving
25 Sale of Moses Lake Equipment, etc.— Page 7

1 **C. The Sale Is Free and Clear of Any Lien, Claim or Interest**

2 Section 363(f) allows the Chapter 11 Trustee to sell property of the estate
3 free and clear of interests that are “in bona fide dispute,” 11 U.S.C. § 363(f)(4), or
4 where the asserted interest holder “could be compelled, in a legal or equitable
5 proceeding, to accept a monetary satisfaction of such interest.” 11 U.S.C.
6 § 363(f)(5). The claim does not have to be paid to satisfy section 363(f). *See In re*
7 *Lady H Coal Co., Inc.*, 193 B.R. 233, 247–48 (Bankr. S.D. W. Va. 1996)
8 (referring to “hypothetical” satisfaction under (f)(5), since the subsection uses
9 “could be” compelled and not “must be” or “shall be” compelled).

10 The Trustee is aware of Jun Dam’s claim to the Debtor’s assets. Further, the
11 ad hoc Creditors’ Committee of WTT Token Holders and Minders (the “WTT
12 Token Committee”) filed an administrative claim (the “WTT Token Committee
13 Claim”) seeking essentially administrative rent for the Trustee’s operation of the
14 Debtor’s facilities for the benefit of the estate. [Doc 547].

15 These claims are in *bona fide* dispute. Jun Dam’s claim and the WTT Token
16 Committee Claim arise from the rescission or purchase of a security of the Debtor
17 or Debtor’s affiliate. The WTT Token Committee has argued that the miner
18 purchases were separate from the purchase of tokens. However, the WTT Token
19 Committee Claim and supporting documents show that the purchase of miners
20 was integral to the purchase of tokens. With limited exceptions that do not apply

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24 Memorandum in Support of Chapter 11
25 Trustee’s Motion for Order: (i) Approving
 Sale of Moses Lake Equipment, etc.— Page 8

1 here,² after the ICO, no one could mine at Giga Watt without tokens. Therefore,
2 the claims regarding miners cannot be separated from the token claims and both
3 claims arise from the purchase of a security. Pursuant to section 510(b), Jun Dam
4 and the WTT Token Committee members have claims that are subject to
5 mandatory subordination. 11 U.S.C. § 510(b). They do not have any claim, lien or
6 interest in the ML Equipment. Further, all the miners subject to the Sale are
7 labeled, “Property of Giga Watt, Inc.,” and have been so labelled since before the
8 Trustee was appointed. The foregoing is sufficient to raise a *bona fide* dispute and
9 allow the Sale to proceed free and clear of these claims.

10 The Motion can be approved without a *bona fide* dispute because each party
11 who might assert an interest in the ML Equipment has filed a proof of claim in
12 this case asking for payment of money. Therefore, these claimants could be
13 compelled to accept a monetary satisfaction and their claims satisfy section
14 363(f)(5) of the Bankruptcy Code. 11 U.S.C. § 363.

15 For all the foregoing reasons, the Sale can be approved free and clear of all
16 claims, liens and interests.

17 [This memorandum continues on the next page.]

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21 ² The exceptions are: (1) the sale of Pod 1 to Allrise Financial Group, Inc., and
22 Allrise IP Holding, Inc.; (2) the sale of Pod 8 to EcoDiversified Holdings, Inc.;
23 and (3) possibly the use of one pod at the Pangborn site by Trevin Vaughn d/b/a
Red Team Investments, Inc.

1 **D. The Sale Is in Good Faith**

2 The Trustee requests a finding that the Agreement is made in good faith
3 pursuant to 11 U.S.C. § 363(m). Under § 363(m) of the Bankruptcy Code:

4 [w]hen a sale of assets is made to a good faith purchaser,
5 it may not be modified or set aside unless the sale was
stayed pending appeal.

6 *In re Filtercorp, Inc.*, 163 F.3d 570, 576 (9th Cir. 1998).

7 A good faith buyer “is one who buys ‘in good faith’ and ‘for value.’” *Ewell*
8 *v. Diebert (In re Ewell)*, 958 F.2d 276, 281 (9th Cir. 1992). The analysis is holistic
9 and does not depend on any one factor. *See also In re Onouli-Kona Land Co.*, 846
10 F.2d 1170, 1174 (9th Cir. 1988) (“Ninth Circuit authority . . . does not make good
11 faith depend on ‘value’”); *accord In re Lind*, 2019 WL 2950167, at *4
12 (B.A.P. 9th Cir. July 8, 2019) (“[A] a good faith finding does not turn on the
13 purchase price in isolation.”). The Sale Agreement was negotiated at arm’s length.
14 The Buyer is not an insider of the Debtor and is disinterested. The foregoing is
15 sufficient to find that the Sale and the Agreement are made in good faith.

16 If another party wins the bidding, then the Trustee requests the opportunity
17 to present evidence regarding good faith with respect to the winning bidder.

18 **E. Cause Exists to Waive the Rule 6004 Stay**

19 Time is of the essence. This Sale will allow the Trustee to vacate the
20 premises at the ML Facility. The ML Landlord is understandably anxious to re-let
21 the premises. The sooner the Sale can close, the sooner the Trustee can return the
22 premises to the ML Landlord. Furthermore, it would be more efficient and safer

23 Memorandum in Support of Chapter 11
24 Trustee’s Motion for Order: (i) Approving
Sale of Moses Lake Equipment, etc.— Page 10

1 for the ML Equipment to be removed before the cold weather, ice and snow
2 commence.

3 The foregoing establishes cause to waive the Rule 6004 stay and allow the
4 Order approving the Sale to be effective immediately. Fed.R.Bank.P. 6004(h).

5 **F. Cause Exists for Shortened Notice**

6 Rule 9006(c)(1) allows the Court to reduce the period for objecting to the
7 Motion. Fed.R.Bank.P. 9006(c)(1). *See also* Fed.R.Bank.P. 2002(a)(2) (A court
8 may “for cause shown” shorten the time to object to a proposed sale of property).
9 *Accord* L.B.R. 2002-1(c)(2).

10 Cause exists to shorten notice. It will be less expensive and safer if the
11 Buyer can remove the ML Equipment before the cold weather commences. Also,
12 pursuant to the Sale, the Buyer assumes the cost and responsibility of removing
13 the ML Equipment from the ML Facility. This removal of equipment greatly
14 facilitates the return of the premises to the ML Landlords, who have informed the
15 Trustee that they are anxious to recover the premises and re-let them. As set forth
16 above, the Trustee has entered into a separate agreement with the ML Landlords,
17 subject to Court approval, resolving all outstanding issues between the estate and
18 the ML Landlords, and facilitating the orderly and efficient return of the ML
19 Facility to the ML Landlords. Selling the ML Equipment is an integral part of
20 returning the premises to the ML Landlords.

21
22
23 Memorandum in Support of Chapter 11
24 Trustee's Motion for Order: (i) Approving
Sale of Moses Lake Equipment, etc.— Page 11
25

G. The Form and Manner of Service of Notice Is Sufficient

The Trustee is serving the Notice on the Master Mailing List on Tuesday, September 22, 2020. A copy of the Notice is attached to the Motion as Exhibit C. The Notice describes the Sale, Bid Procedures, and the reasons for shortened notice. It otherwise complies with Fed.R.Bank.P. 2002(c)(1) and L.B.R. 2002-1.

Based on the foregoing, the form and manner of service of the Notice is sufficient.

VII. CONCLUSION

WHEREFORE, the Trustee respectfully requests entry of an Order:

1. Granting the Motion;
2. Approving the Sale Agreement;
3. Authorizing the Trustee to enter into and perform pursuant to the Sale
Agreement or on such terms as are not less favorable to the estate than the Sale
Agreement's terms;
4. Approving the form and manner of service of the Notice; and
5. Granting such other and further relief as the Court deems necessary
just.

Dated: September 23, 2020

POTOMAC LAW GROUP PLLC

By: /s/ Pamela M. Egan
Pamela M. Egan (WSBA No. 54736)

*Attorneys for Mark D. Waldron, Chapter 11
Trustee*

**Memorandum in Support of Chapter 11
Trustee's Motion for Order: (i) Approving
Sale of Moses Lake Equipment, etc.— Page 12**